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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

RD27416-2

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Signature

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Rebecca L. Blake

Application Number

10/638,099

Filed

08/07/2003

First Named Inventor

Robert R. Gallucci

Art Unit

1711

Examiner

Tran, Thao T.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.

Registration number 44,571

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 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

February 6, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.



*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.:	10/638,099	:	Confirmation No.:	3376
Applicant:	Robert R. Gallucci et al.	:	Group Art Unit:	1711
Filed:	08/07/2003	:	Examiner:	Tran, Thao T.
Docket No.:	RD27416-2	:		

For: REFLECTIVE ARTICLE AND METHOD FOR THE PREPARATION
THEREOF

February 6, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REMARKS ACCOMPANYING PRE-APPEAL BRIEF REQUEST
FOR REVIEW**Introduction

As of the Advisory Action mailed January 22, 2007 (which entered Applicants' Amendment After Final filed December 14, 2006), claims 1, 4, 5, 7, 8, 10, 11, 15-19, 21, and 22 are pending and rejected. Applicants respectfully assert that the rejections of record omit one or more essential elements needed for a *prima facie* rejection.

Nonstatutory Double Patenting Rejections over Iacovangelo '032 Claims

Claims 1, 4, 5, 7, 8, 10, 11, and 15-18 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,420,032 to Iacovangelo ("Iacovangelo '032"). Applicants respectfully traverse the rejection because Iacovangelo '032 does not teach Applicants' claim 1 protective layer.

Applicants' claim 1 requires the presence of "a protective layer comprising the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicon compounds; wherein the reflective layer is interposed between the haze-prevention layer and the protective layer; and wherein the protective layer is in contact with the reflective metal layer". The claims of Iacovangelo '032 do not teach or suggest a layered structure having a single layer satisfying all the limitations of Applicants' claim 1 protective layer.

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The Examiner has stated, "Note that the abrasion resistant layer or scratch resistant layer in claims 25-28, 36 of the patent is considered as the protective layer in the instant claims." 11/15/2006 Office Action, page 4, second paragraph. Applicants respectfully disagree for the reasons that follow, claim-by-claim.

Iacovangelo '032 claim 25 does not satisfy the limitations of Applicants' claim 1 protective layer for at least two reasons: first, Applicants' claim 1 protective layer "compris[es] the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicon compounds" and Iacovangelo '032 claim 25 does not teach or suggest this limitation (claim 25 recites "an abrasion resistant layer" but does not specify its composition); second, Applicants' claim 1 protective layer is "in contact with the reflective metal layer", whereas the abrasion resistant layer of Iacovangelo '032 claim 25 is separated from the transparent metal layer by a transparent metal oxide layer.

Iacovangelo '032 claim 26 does not satisfy the limitations of Applicants' claim 1 protective layer because Applicants' claim 1 protective layer is "in contact with the reflective metal layer", whereas the abrasion resistant layer of Iacovangelo '032 claim 26 is separated from the transparent metal layer by a transparent metal oxide layer.

Iacovangelo '032 claims 27 and 28 do not satisfy the limitations of Applicants' claim 1 protective layer because Applicants' claim 1 protective layer is "in contact with the reflective metal layer", whereas the abrasion resistant layer of Iacovangelo '032 claim 27 and 28 is separated from the transparent reflective layer by a transparent metal oxide layer OR by the combination of a transparent metal oxide layer and a stress reducing interlayer.

Iacovangelo '032 claim 36 does not satisfy the limitations of Applicants' claim 1 protective layer. Applicants' claim 1 protective layer is "in contact with the reflective metal layer", whereas the scratch resistant coating of Iacovangelo '032 claim 36 is separated from the metal-containing infrared radiation reflection layer by at least the metal oxide-containing ultraviolet radiation absorption layer.

Thus, not one of Iacovangelo '032 claims 25-28, and 36 includes a layer that satisfies the limitations of Applicants' claim 1 protective layer.

Because claims 25-28 and 36 of Iacovangelo '032 do not recite a layer satisfying the compositional and positional limitations of Applicants' claim 1 protective layer, a prima facie case of obviousness against claim 1 has not been established, and claim 1 is patentable over the claims of Iacovangelo '032 for this reason alone. Given that claims 4, 5, 7, 8, 10, 11, and 15-18 each depend ultimately from and further limit claim 1, they too are patentable over the claims of Iacovangelo '032.

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Claim Rejections Under 35 U.S.C. § 102(e) over Iacovangelo '032

Claims 1, 7, 8, 10, 11, 16; 17, 19, 21, and 22 stand rejected under 35 U.S.C. § 102(e), as allegedly anticipated by U.S. Patent No. 6,420,032 to Iacovangelo ("Iacovangelo '032"). Applicants respectfully traverse this rejection.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766, 1767 (Fed. Cir. 1987). The cited reference must clearly and unequivocally disclose the claimed subject matter without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference. *In re Arkley*, 172 USPQ 524, 526 (C.C.P.A. 1972).

From a perspective in which the substrate is at the bottom of the layered structure, Applicants' independent claims 1, 19, and 21 each require a reflective metal layer that (1) is reflective, (2) is above and in direct contact with a layer meeting the compositional limitations of Applicants' haze-prevention layer (that is, a layer "compris[ing] a plasma-polymerized organosilicone"), and (3) is below and in direct contact with a layer meeting the compositional limitations of Applicants' protective layer (that is, a layer "comprising the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicon compounds"). Iacovangelo '032 does not teach a layer that, by itself, simultaneously satisfies these three requirements.

The Examiner has made the following analogies between the layers of Iacovangelo '032 and those of Applicants' claims:

Iacovangelo discloses a laminate, comprising a polymeric substrate 1, an interlayer 5 (haze-prevention layer), a reflective metal layer 2, a metal oxide UV absorbing layer 3, and an abrasion resistant layer 4 (protective layer) (see Fig. 3A-D; col. 6, ln. 13-44). . . . The reflective metal layer comprises aluminum or silver (see col. 5, ln. 36-42). Iacovangelo further discloses an interlayer 6 of aluminum, between layers 3 and 4 (see Fig. 3C; col. 6, ln. 59-66), which also meets the requirement of the reflective metal layer in the claims.

It is further noted that Fig. 3C illustrates that the reflective metal layer 2 is in contact with the interlayer 5, which in turn is in contact with substrate 1, thus meeting the newly added limitation.

11/15/2006 Office Action, pages 4-5.

Ignoring, for now, the fact that the Examiner's description quoted above mixes up Applicants' terminology with that of Iacovangelo '032, Applicants respectfully note that

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not one of the metal-containing layers of Iacovangelo '032 identified by the Examiner meets all the limitations of Applicants' claim 1, 19, and 21 reflective metal layer. In the passage quoted above, the Examiner has specifically asserted the equivalence of Applicants' claim 1 reflective metal layer with the Iacovangelo '032 adhesion promoting layer 2 of Figures 3A-D and column 6, line 13-44, and with interlayer 6 of Figure 3C and column 6, lines 59-66. However, these layers do not meet the limitations of Applicants' claim 1 reflective metal layer for at least the following reasons.

Adhesion promoting layer 2 of Figure 3A is not taught to be "reflective" to visible light (instead, the Iacovangelo '032 abstract describes this layer as "transparent"), and it is not in contact with a layer having the composition of Applicants' claim 1 haze-prevention layer (instead, it is above a substrate and below a metal oxide layer).

Adhesion promoting layer 2 of Figures 3B-D is not taught to be "reflective" to visible light (instead, the Iacovangelo '032 abstract describes this layer as "transparent"), and it is not simultaneously in contact with a haze-prevention layer comprising a plasma polymerized organosilicone and a separate protective layer comprising the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicone compounds (although the adhesion promoting layer 2 is above abrasion resistant layer 5 which "may comprise a plasma polymerized organosilicon material" (col. 6, ll. 19-21), it is also below a metal oxide UV absorbing layer; it therefore is not in contact with a haze-prevention layer comprising a plasma polymerized organosilicone and a separate protective layer comprising the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicone compounds).

Interlayer 6 of Figure 3C is not taught to be "reflective" to visible light (and such reflectivity, if present, would interfere with the intended function of the Iacovangelo '032 article as a window), and it is not simultaneously in contact with a haze-prevention layer comprising a plasma polymerized organosilicone and a separate protective layer comprising the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicone compounds (although the interlayer 6 is below "abrasion resistant layer 4", it is also above a metal oxide UV absorption layer 3" (emphasis added); it therefore is not in contact with a haze-prevention layer comprising a plasma polymerized organosilicone and a separate protective layer comprising the plasma decomposition product of an oxidant and a reactant gas selected from silanes, disilanes, and organosilicone compounds).

Thus, each of the metal-containing layers of Iacovangelo '032 identified by the Examiner fails to satisfy at least two limitations of Applicants' claim 1 reflective metal layer. Furthermore, it is impermissible for the Examiner to argue that a single layer of the reference can serve both as Applicants' haze-prevention layer and Applicants' protective layer, because these two layers are clearly distinct and spatially separate.

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Because Iacovangelo '032 does not teach a layer satisfying the compositional and positional limitations of the reflective metal layer of Applicants' independent claims 1, 19, and 21, Iacovangelo '032 does not anticipate these claims. Given that claims 7, 8, 10, 11, 16, 17, and 22 each depend ultimately from and further limit claim 1 or claim 21, they too are not anticipated by Iacovangelo '032. Applicants therefore respectfully request the reconsideration and withdrawal of the rejection of claims 1, 7, 8, 10, 11, 16, 17, 19, and 21-22 under 35 U.S.C. § 102(e) over Iacovangelo '032.

Conclusion

The obviousness-type double patenting and anticipation rejections of Applicants' claims over Iacovangelo '032 omit one or more essential elements needed for a prima facie rejection. Accordingly, the rejections should be withdrawn and the claims should be allowed.

The Commissioner is hereby authorized to charge any additional fees that may be required for this submission, or credit any overpayment, to Deposit Account No. 50-3619, maintained by Assignee.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above identified Deposit Account.

Respectfully submitted,
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